

IOWA FINANCE AUTHORITY[265]

Notice of Intended Action

Proposing rule making related to water quality financing program and providing an opportunity for public comment

The Iowa Finance Authority hereby proposes to adopt new Chapter 46, “Water Quality Financing Program,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 16.152(4).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 16.134A and 16.151 through 16.154.

Purpose and Summary

These proposed rules are intended to implement the Water Quality Financing Program created by 2018 Iowa Acts, Senate File 512, and codified at Iowa Code sections 16.134A and 16.151 through 16.154.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

The program is likely to have a positive impact on jobs in Iowa by financing projects that will involve construction, engineering, and related occupations.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Authority for a waiver of the discretionary provisions, if any.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Authority no later than 4:30 p.m. on April 16, 2019. Comments should be directed to:

Lori Beary
Iowa Finance Authority
1963 Bell Avenue, Suite 200
Des Moines, Iowa 50315
Phone: 515.725.4900
Email: lori.beary@iowa.gov

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

April 16, 2019
9 to 10 a.m.

Authority Offices
1963 Bell Avenue, Suite 200
Des Moines, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Authority and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

Adopt the following **new** 265—Chapter 46:

CHAPTER 46
WATER QUALITY FINANCING PROGRAM

265—46.1(16) Overview.

46.1(1) Source of funds. The water quality financing program shall consist of moneys transferred to the fund, loan interest and earnings, and moneys from other funds as provided by law.

46.1(2) Purpose. The purpose of the program shall be to provide financial assistance to enhance the quality of surface water and groundwater, particularly by providing financial assistance for projects designed to improve water quality by addressing point and nonpoint sources, with a higher prioritization provided to collaborative efforts.

265—46.2(16) Definitions.

“Authority” means the Iowa finance authority.

“Cost” means all costs, charges, expenses, or other indebtedness incurred by a loan recipient and determined by the authority as reasonable and necessary for carrying out all works and undertakings necessary or incidental to the accomplishment of any project.

“Eligible entity” means a municipality or a landowner, as determined by the authority, a public utility as defined in Iowa Code section 476.1, a specified industry, or a rural water district or rural water association as defined in Iowa Code section 357A.1.

“Fund” means the water quality financing program fund created pursuant to Iowa Code section 16.153.

“Iowa nutrient reduction strategy” means the same as defined in Iowa Code section 455B.171.

“Loan recipient” means an eligible entity that has received a loan under the program.

“Municipality” means a governmental body such as a state agency or a political subdivision of the state. Municipality includes but is not limited to a city, city utility, county, soil and water conservation district, sanitary district, a subdistrict of any of the foregoing districts, a state agency, or other governmental body or corporation empowered to provide sewage collection and treatment services or drinking water, or any entity jointly exercising governmental powers pursuant to Iowa Code chapter 28E or 28F, or any other combination of two or more governmental bodies or corporations acting jointly under the laws of this state in connection with a project.

“Program” means the water quality financing program created in Iowa Code chapter 16, subchapter X, part 4.

“*Project*” means any combination of improvements, structures, developments, tasks, actions, constructions, modifications, operations, or practices designed to improve water quality that are proposed by an eligible entity and approved by the authority. “Project” includes but is not limited to any of the following:

1. In the context of water pollution control facilities, the acquisition, construction, reconstruction, extension, equipping, improvement, or rehabilitation of any works and facilities useful for the collection, treatment, and disposal of sewage and industrial waste in a sanitary manner, including treatment works as defined in section 212 of the federal Clean Water Act, or the implementation and development of management programs established under sections 319 and 320 of the federal Clean Water Act, including construction and undertaking of nonpoint source water pollution control projects and related development activities authorized under those sections.

2. In the context of drinking water facilities, the acquisition, construction, reconstruction, extending, remodeling, improving, repairing, or equipping of waterworks, water mains, extensions, or treatment facilities useful for providing potable water to residents served by a water system, including the acquisition of real property needed for any of the foregoing purposes, and such other purposes and programs as may be authorized under the federal Safe Drinking Water Act.

3. A project, operation, or practice undertaken or carried out to address watershed protection, flood prevention, or water quality improvement.

4. A project meeting the requirements of a water resource restoration sponsor project under Iowa Code section 455B.199.

“*Specified industry*” means either of the following:

1. An entity engaged in an industry identified in the Iowa nutrient reduction strategy, as determined by the authority, which industry is or will be required pursuant to the Iowa nutrient reduction strategy to collect data on the source, concentration and mass of total nitrogen or total phosphorus in its effluent, and to evaluate alternatives for reducing the amount of nutrients in its discharge; or

2. An entity implementing technology or operational improvements to reduce nutrients in its discharge.

265—46.3(16) Program administration.

46.3(1) *Cooperating agencies.* The fund shall be administered by the authority in cooperation with the department of natural resources and the department of agriculture and land stewardship.

46.3(2) *Interest rates and terms.* Interest rates and repayment terms shall be determined by the authority in cooperation with the department of natural resources and the department of agriculture and land stewardship. The interest rate shall be specified in the application. Loan and grant terms shall be negotiated with each loan recipient and grant recipient, as the case may be, but no loan shall have a term more than 20 years. Loans may be prepaid at any time with no penalty.

46.3(3) *Parts of project eligible for funding.* Only the part of the project that has a water quality protection or improvement component may be funded.

46.3(4) *Funding guidelines.* The fund shall be administered in such a manner as to provide a permanent source of water quality project financial assistance to eligible entities. Financial assistance shall be provided in the form deemed by the authority to be most convenient for the efficient financing of projects, including loans, forgivable loans, or grants.

265—46.4(16) Project funding.

46.4(1) *Annual applications.* Applications shall be taken annually.

46.4(2) *Plan requirements.* Each application shall include a plan that meets the following requirements:

- a. The plan shall include one or more projects that improve water quality in the local area or watershed. Projects shall use practices identified in the Iowa nutrient reduction strategy.

- b. The plan shall describe in detail the manner in which the project will be financed and undertaken, including, as applicable, the sources of revenue directed to financing the improvements as well as the eligible entities that will be receiving the revenues and how such revenues will be spent on the project.

46.4(3) *Project agreements.* The financial assistance shall be provided to the project pursuant to a written agreement between the recipient and the authority, which shall include standard terms for the receipt of program moneys and any other terms the authority deems necessary or convenient for the efficient administration of the program.

265—46.5(16) Financial agreements.

46.5(1) *Project requirements.* All projects financed under the program shall meet the following requirements:

- a. The project owner shall be responsible for obtaining all necessary permits;
- b. All eligible costs shall be documented to the satisfaction of the authority before proceeds may be disbursed;
- c. The recipient shall maintain records that document all costs associated with the project. The recipient shall provide access to these records to the authority upon request. The recipient shall retain such records and documents for inspection and audit purposes for a period of three years from the date of the final disbursement of funds; and
- d. The recipient shall agree to provide the authority, the department of natural resources, and the department of agriculture and land stewardship or their agents access to the project site at all times during the construction process to verify that the funds are being used for the purpose intended and that the construction work meets applicable state and federal requirements.

46.5(2) *Loan requirements.* All loans made by the authority to finance projects under the program shall meet the following requirements:

- a. The loan shall be accompanied by an enforceability opinion of counsel in a form acceptable to the authority;
- b. Repayment must begin within 30 days after project completion or by the date specified in the loan agreement; and
- c. The loan shall be secured by a first lien upon the dedicated source of repayment which may rank on a parity basis with other obligations or, with the approval of the executive director of the authority, may be subordinate in right of payment to one or more of the recipient's other outstanding revenue obligations.

265—46.6(16) Project scoring. The provision of financial assistance under the program shall take into account, as applicable, the number of municipalities, landowners, public utilities, specified industries, rural water districts, or rural water associations that constitute an eligible entity, and the eligible entity's financing capacity. The authority shall only provide financial assistance to eligible entities that have sufficient financing capacity and that submit an appropriate plan designed to improve water quality.

265—46.7(16) Scoring criteria.

46.7(1) *Financial feasibility.* Thirty-five percent of the total possible points shall be based on financial feasibility of the proposed project. Elements considered under financial feasibility shall include but not be limited to:

- a. Experience of the eligible entity in financial management;
- b. A detailed project budget detailing all sources of funds as well as expected project costs. This would include information on whether other funding has been received, applied for or just identified;
- c. A project timeline, including information on the development of plans and specifications for the project, needed approvals and permits, and project construction start and completion dates;
- d. A maintenance plan for the project, including information on the likely useful life of the project, the party or parties responsible for maintaining the project, the cost of maintenance, and how those costs will be paid; and
- e. In the case of loans, the source(s) of funds for loan repayment.

46.7(2) *Project collaboration.* Thirty percent of the total possible points shall be based on project collaboration. Elements considered under project collaboration shall include but not be limited to:

- a. A description of all parties involved in the project, including the roles, responsibilities, qualifications and experience of each party;
- b. A description of any formal agreements among the parties and the status of those agreements;
- c. A statement of the financial commitments of each party in the entity with respect to the project, including contributions of cash, gifts, or loans; and
- d. A description of whether the project is part of a larger coordinated effort to improve water quality.

46.7(3) *Water quality benefit.* Thirty-five percent of the total possible points shall be based on water quality benefit. Elements considered under the water quality benefit of the project shall include but not be limited to:

- a. The identification of the specific watershed where the project will be located;
- b. Whether a comprehensive watershed plan has been completed and water quality impairments have been identified for the watershed;
- c. Whether the goals of the project are targeted to impact the identified impairments in the watershed, including a description of methods used to determine practices and the location of practices to reach those goals;
- d. Information on how results of the project will be measured (e.g., by quantity of pollution being reduced or the percentage of pollution being reduced); and
- e. A description of how the project will use practices identified in the Iowa nutrient reduction strategy.

265—46.8(16) Termination; rectification of deficiencies; disputes.

46.8(1) *Termination.* The authority shall have the right to terminate and recapture any grant or loan proceeds when terms of the financial agreement have been violated. The executive director shall establish a repayment schedule for funds already disbursed to the recipient. All terminations shall be in writing.

46.8(2) *Rectification of deficiencies.* Failure of the recipient to implement the approved project or to comply with the applicable requirements constitutes grounds for the authority to recapture or withhold funds. The recipient is responsible for ensuring that the identified deficiency is rectified. Once the deficiency is corrected, the funds may be released.

46.8(3) *Disputes.* A recipient that disagrees with the authority's withholding of funds may request a formal review of the action. The recipient must submit a request in writing to the executive director within 30 days of notification by the authority of its planned action.

These rules are intended to implement Iowa Code sections 16.134A and 16.151 through 16.154.